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Hearing Date: May 23, 2012  
Hearing Time: 10:00 a.m. EST

*Attorneys for 37 ERISA Plan Claimants Listed Below*

**UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

-----x	
SECURITIES INVESTOR PROTECTION	:
CORPORATION,	:
Plaintiff,	: Adversary Proceeding
	:
— <i>versus</i> —	: No. 08-01789 (BRL)
	:
BERNARD L. MADOFF INVESTMENT	:
SECURITIES, LLC,	: SIPA Liquidation
Defendant	(Substantively Consolidated)
-----x	
In re BERNARD L. MADOFF,	:
Debtor	:
-----x	

**AFFIDAVIT OF JENNIFER A. CLARK, ESQ. IN OPPOSITION  
TO TRUSTEE'S MOTION FOR AN ORDER AFFIRMING TRUSTEE'S  
DETERMINATIONS DENYING CLAIMS OVER ERISA-RELATED OBJECTIONS**

STATE OF NEW YORK )  
COUNTY OF ONONDAGA ) ss.:

JENNIFER A. CLARK, ESQ., being duly sworn, states as follows:

1. I am a partner in the law firm of Blitman & King LLP, attorneys for 37 employee benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA") as amended, 29 U.S.C. §§ 1001-1461("ERISA Plan Claimants").<sup>1</sup>

2. I submit this affidavit in opposition to the motion of Irving H. Picard ("Trustee"), trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS") and the estate of Bernard L. Madoff ("Madoff"), for an order affirming the Trustee's determination denying the claims of ERISA Plan Claimants. See Dkt. No. 4521.

3. Pursuant to the Scheduling Order issued by this Court on November 8, 2011, on this date, I served this affidavit and a CD of the exhibits upon the Trustee by regular mail. Pursuant to the November 8, 2011 Order, this affidavit, without exhibits, is filed with this Court. For the Court's convenience, certain relevant portions of the exhibits are attached to the Memorandum of Law.

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<sup>1</sup> The 37 ERISA Plan Claimants are: Bricklayers and Allied Craftsmen Local 2 Annuity Fund; Bricklayers and Allied Craftworkers Local 2, Albany, New York, Health Benefit Fund; Bricklayers and Allied Craftworkers Local 2, Albany, New York, Pension Fund; Building Trade Employers Insurance Fund; Central New York Laborers' Annuity Fund; Central New York Laborers' Health and Welfare Fund; Central New York Laborers' Pension Fund; Central New York Laborers' Training Fund; Engineers Joint Welfare Fund; Engineers Joint Training Fund; International Brotherhood of Electrical Workers Local Union No. 43 and Electrical Contractors Pension Fund; International Brotherhood of Electrical Workers Local No. 43 and Electrical Contractors Welfare Fund; I.B.E.W. Local 139 Pension Fund; I.B.E.W. Local 241 Pension Fund; I.B.E.W. Local 241 Welfare Benefits Fund; I.B.E.W. Local 325 Annuity Fund; I.B.E.W. Local 325 Pension Fund; I.B.E.W. Local 910 Annuity Fund; I.B.E.W. Local 910 Pension Fund; I.B.E.W. Local 910 Welfare Fund; I.B.E.W. Local 1249 Pension Fund; Laborers' Local 103 Annuity Fund; Laborers' Local 103 Welfare Fund; Laborers' Local 103 Pension Fund; New York State Lineman's Safety Training Fund; Oswego Laborers' Local No. 214 Pension Fund; Plumbers, Pipefitters and Apprentices Local No. 112 Health Fund; Roofers' Local 195 Annuity Fund; Roofers' Local 195 Health & Accident Fund; Roofers' Local 195 Pension Fund; Syracuse Builders Exchange, Inc./CEA Pension Plan; SEIU 1199Upstate Pension Fund; Service Employees Benefit Fund; Service Employees Pension Fund of Upstate New York; Local 73 Retirement Fund; Local 73 Annuity Fund; and Upstate Union Health & Welfare Fund. (Effective December 31, 2010, Laborers' Local 103 Annuity Fund and Laborers' Local 103 Welfare Fund merged with Rochester Laborers' Annuity Fund and Rochester Laborers' Welfare Fund, respectively, and Rochester Laborers Annuity Fund and Rochester Laborers' Welfare Fund are the successor and surviving employee benefit funds.)

4. The ERISA Plan Claimants are employee benefit plans governed by ERISA.

[Attached as **Exhibit A** are true and correct copies of the trust agreements for the 37 ERISA Plan Claimants and attached as **Exhibit B** are true and correct copies of the 37 ERISA Plan Claimants' plan documents and/or summary plan descriptions, with Exhibits A and B setting forth the nature of each plan and type of benefits provided by each plan and, thus, establishing that they are governed by ERISA].

5. The ERISA Plan Claimants are employee benefit plans governed by ERISA as evidenced by their filing of a Form 5500 with the Internal Revenue Service. [Attached as **Exhibit C** are true and correct copies of the ERISA Plan Claimants' Form 5500, Annual Return/Report of Employee Benefit Plan, filed pursuant to Sections 104 and 4065 of ERISA for the year 2008. (Pursuant to 29 C.F.R. 2520.104-22, apprenticeship and training funds are exempt from filing a Form 5500.) (The documents at Exhibit C are publicly available at <http://www.freeerisa.com>.)]

6. Twenty-two (22) ERISA Plan Claimants entrusted plan assets with BLMIS through Income-Plus, a "Group Trust" within the meaning of Section 501(a) of the Internal Revenue Code and Revenue Ruling 81-100 issued by the Internal Revenue Service. [Attached as **Exhibit D** is a true and correct copy of a Confidential Private Offering Memorandum of Income-Plus dated December 15, 1993, and attachments thereto, including an Agreement of Trust Establishing Group Trust and an Adoption Agreement; attached as **Exhibit E** is a true and correct copy of a Confidential Private Placement Memorandum of Income-Plus dated November 1, 2003, and attachments thereto, including an Agreement of Trust Establishing Group Trust and an Adoption Agreement].

7. Five (5) ERISA Plan Claimants entrusted plan assets with BLMIS through Andover Associates LLC I (“Andover”), a Plan Asset Vehicle within the meaning of Section 3(42) of ERISA and regulations promulgated pursuant thereto, 29 C.F.R. § 2510.3-101. [Attached as **Exhibit F** is a true and correct copy of a Confidential Offering Memorandum of Andover dated June 2, 2008].

8. Twenty-two (22) ERISA Plan Claimants entrusted plan assets with BLMIS through Beacon Associates LLC I (“Beacon I”) and/or Beacon Associates LLC II (“Beacon II”) [collectively, Beacon I and Beacon II are referred to as “Beacon”], a Plan Asset Vehicle within the meaning of Section 3(42) of ERISA and regulations promulgated pursuant thereto, 29 C.F.R. § 2510.3-101. [Attached as **Exhibit G** is a true and correct copy of the Articles of Incorporation and Operating Agreement of Beacon Associates LLC dated January 18, 1995; attached as **Exhibit H** is a true and correct copy of a Confidential Offering Memorandum of Beacon dated June 15, 2000, and attached Operating Agreement and Subscription Documents; attached as **Exhibit I** is a true and correct copy of an Amended and Restated Operating Agreement of Beacon I dated April 1, 2004; attached as **Exhibit J** is a true and correct copy of a Confidential Offering Memorandum of Beacon I dated August 9, 2004; attached as **Exhibit K** is a true and correct copy of a Confidential Offering Memorandum of Beacon II dated August 9, 2004].

9. As established by the Beacon and Andover Offering Memorandums and/or as admitted by Beacon, Andover and Beacon were Plan Asset Vehicles since more than 25% of the assets were from ERISA plans. See Exs. F at 38; O at 41. [Attached as **Exhibit L** is a true and correct copy of a letter from Joel Danziger, President of Beacon Associates Management Corp., to my firm, dated December 17, 2010, stating that “as of November 30, 2008 and currently,” more than 25% of Beacon’s assets were from ERISA plans].

10. As Plan Asset Vehicles or a Group Trust holding the ERISA Plan Claimants' plan assets, Beacon, Andover and Income-Plus were required to file a Form 5500 with the Internal Revenue Service. [Attached as **Exhibit M** are true and correct copies of Annual Returns/Reports of Employee Benefit Plan, also known as Form 5500, filed by Andover, Beacon, and Income-Plus pursuant to Sections 104 and 4065 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1024 and 1365, for the year 2008. (The documents at Exhibit M are publicly available at <http://www.freeerisa.com>).].

11. The amount of cash deposited with BLMIS by ERISA Plan Claimants through Income-Plus is ascertainable. [Attached as **Exhibit N** are copies of documents reflecting all deposits and withdrawals, and other account information concerning ERISA Plan Claimants, and establishing the amount of cash they entrusted to BLMIS through Income-Plus. The documents at Exhibit N were obtained from J.P. Jeanneret Associates, Inc., the Investment Manager of the Income-Plus Investment Fund ("Income-Plus"), in response to a subpoena duces tecum served by my firm on counsel for Income-Plus].

12. The amount of cash deposited with BLMIS by ERISA Plan Claimants through Beacon and Andover is ascertainable. [Attached as **Exhibit O** are copies of documents reflecting all deposits and withdrawals, and other account information concerning ERISA Plan Claimants, and establishing the amount of cash they deposited and entrusted to BLMIS through Andover and/or Beacon. The documents at Exhibit O were voluntarily provided by the Beacon/Andover Group in response to an informal request for documents submitted by my firm].

13. BLMIS had knowledge that he managed the ERISA Plan Claimants' assets obtained through Beacon and Andover and, thus, that he was subject to ERISA fiduciary obligations in connection therewith. [Attached as **Exhibit P** are true and correct copies of documents from the files of the Beacon/Andover Group, showing that BLMIS was a fiduciary managing ERISA plan assets].

14. BLMIS had knowledge that he managed the ERISA Plan Claimants' assets obtained through Income-Plus and, thus, that he was subject to ERISA fiduciary obligations in connection therewith. [Attached as **Exhibit Q** are true and correct copies of the Fidelity Bond maintained by BLMIS under Section 412 of ERISA, indicating that he was aware that he controlled, through Income-Plus, ERISA plan assets. Attached as **Exhibit R** are the Proxy Policy Procedures Guidelines and Recommendations of J.P. Jeanneret Associates, Inc. concerning Income-Plus, and a letter from BLMIS dated February 14, 1997, indicating his compliance with such proxy voting policies].

15. Each ERISA Plan Claimant timely filed a claim against BLMIS for SIPA coverage; a total of fifty (50) claims were filed by the 37 ERISA Plan Claimants. [Attached as **Exhibit S** are true and correct copies of the following ERISA Plan Claimants' claims for coverage against the BLMIS timely filed under the Securities Investor Protection Act ("SIPA"), 15 U.S.C. §§ 78aaa-78lll]. The claims are as follows:

<b>Andover/Beacon</b>	<b>Claim No.</b>
Bricklayers and Allied Craftsmen Local 2 Annuity Fund	006062
Bricklayers and Allied Craftworkers Local 2, Albany, New York Health Benefit Fund	006061 006003
Building Trade Employers Insurance Fund	005165
Central New York Laborers' Annuity Fund	005075
Central New York Laborers' Health and Welfare Fund	005163 005160
Central New York Laborers' Pension Fund	005070
Central New York Laborers' Training Fund	005076
Engineers Joint Welfare Fund (2 denials received)	005572 005559

Engineers Joint Training Fund	005573
International Brotherhood of Electrical Workers Local Union, No. 43 and Electrical Contractors Pension Fund	005837
International Brotherhood of Electrical Workers Local Union, No. 43 and Electrical Contractors Welfare Fund	005836
I.B.E.W. Local 241 Welfare Benefits Fund	005468
I.B.E.W. Local 910 Welfare Fund	005415
Laborers' Local 103 Annuity Fund	005966
Laborers' Local 103 Welfare Fund	005975
New York State Lineman's Safety Training Fund	005003
Oswego Laborers' Local 214 Pension Fund	006284
Plumbers, Pipefitters and Apprentices Local No. 112, Health Fund	005503
Roofers' Local 195 Annuity Fund	004333
Roofers' Local 195 Health & Accident Fund	004332
Syracuse Builders Exchange, Inc./CEA Pension Plan	005164
Service Employees Benefit Fund	005574
Service Employees Pension Fund of Upstate New York	006161
Local 73 Retirement Fund	005463
Upstate Union Health & Welfare Fund	005949

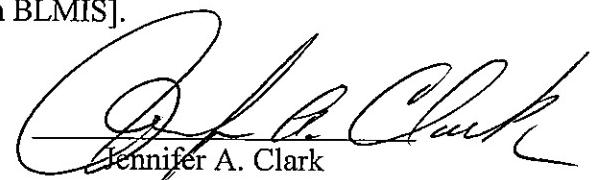
<b>Income-Plus</b>	<b>Claim No.</b>
Bricklayers and Allied Craftsmen Local 2 Annuity Fund	005984
Bricklayers and Allied Craftworkers Local 2 Pension Fund	005983
Central New York Laborers' Annuity Fund	004974
Central New York Laborers' Pension Fund	005077
International Brotherhood of Electrical Workers Local Union, No. 43 and Electrical Contractors Pension Fund	005835
I.B.E.W. Local 139 Pension Fund	005422
I.B.E.W. Local 241 Pension Fund	005467
I.B.E.W. Local 325 Annuity Fund	006585
I.B.E.W. Local 325 Pension Fund	006572
I.B.E.W. Local 910 Annuity Fund	005414
I.B.E.W. Local 910 Pension Fund	004801
I.B.E.W. Local 1249 Pension Fund	006901
Laborers' Local 103 Annuity Fund	005965
Laborers' Local 103 Pension Fund	005964
Local 73 Annuity Fund	005895
Local 73 Retirement Fund	005897
Oswego Laborers' Local 214 Pension Fund	005411
Roofers' Local 195 Pension Fund	004336
Roofers' Local 195 Annuity Fund	004334
SEIU 1199Upstate Pension Fund	005810
Service Employees of Upstate New York Pension Fund	006160
Syracuse Builders Exchange, Inc./CEA Pension Plan	005162

16. The Trustee denied the ERISA Plan Claimants' claims on the grounds that they were not "customers" under SIPA since he could not find an account in their name. [Attached as **Exhibit T** is a true and correct copy of the Notice of Trustee's Determination of Claim issued to ERISA Plan Claimant Bricklayers and Allied Craftsmen Local 2 Annuity Fund denying its claim; each of the ERISA Plan Claimants received substantially similar notices from the Trustee providing identical reasons for the determination].

17. The records of Income-Plus and the Beacon/Andover Group, entities with a titled account at BLMIS, set forth the percentage of cash that each ERISA Plan Claimant entrusted and deposited with BLMIS as of November 30, 2008. [Attached as **Exhibit U** are true and correct copies of documents from the files of Income-Plus and the Beacon/Andover Group showing the percentage of cash entrusted and deposited with BLMIS as of November 30, 2008].

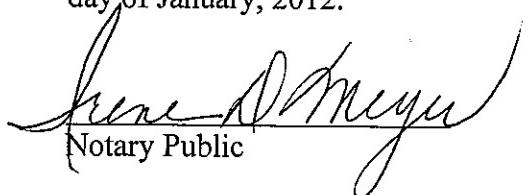
18. ERISA Plan Claimants who deposited cash with BLMIS through Income-Plus were aware that they were depositing and entrusting their plan assets with BLMIS through Income-Plus. These ERISA Plan Claimants will provide a supplemental affidavit and/or testify that they were aware they were depositing cash/plan assets with BLMIS through Income-Plus. [Attached as **Exhibit V** are some documents showing that ERISA Plan Claimants who deposited cash with BLMIS through Income-Plus were aware they were depositing and entrusting their cash with BLMIS].

19. ERISA Plan Claimants who deposited cash with BLMIS through Andover and Beacon were aware that they were depositing and entrusting their plan assets with BLMIS through Andover and/or Beacon. These ERISA Plan Claimants will provide a supplemental affidavit and/or testify that they were aware they were depositing cash/plan assets with BLMIS through Andover and/or Beacon. [Attached as **Exhibit W** are some documents showing that ERISA Plan Claimants who deposited cash with BLMIS through Andover and/or Beacon were aware they were depositing and entrusting their cash with BLMIS].



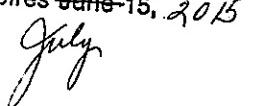
Jennifer A. Clark

Sworn to before me this 17th day of January, 2012.



Irene D. Meyer  
Notary Public

IRENE D. MEYER  
Notary Public, State Of New York  
No. 01ME5013803  
Qualified In Onondaga County  
Commission Expires June-15, 2015



July